

December 28, 2022

MSK Construction, Inc. 1920 Dunbar St., Suite C Charleston, SC 29407 Via US Certified Mail

Virginia Marshall 25 State St. Charleston, SC 29401 VIA US Certified Mail Michael & Susan Williams 8344 Kamborne Court North Charleston, SC 29420 VIA US Certified Mail

Marshall Living Trust dated November 23, 1987 25 State St. Charleston, SC 29401 VIA US Certified Mail

RE:

Surety:

United Fire & Casualty Company (UFG)

Principal:

MSK Construction, Inc. (MSK)

Dear Indemnitors:

This follows our letters dated August 21, 2020, May 4, 2022, and October 3, 2022. In those letters, we gave you notice of MSK's insolvency and the concerns UFG had of receiving claims on the payment and performance bonds ("Bonds") it executed on behalf of MSK.

UFG has now received claims on these bonds. As you know, on November 21, 2022, the Department of Veterans Affairs (VA) terminated for default MSK from Project 659-341, Building 11 Additions and Renovation (MSK Bond No. 54-219901). Additionally, UFG has received payment bond claims on five bonded projects totaling \$2,746,105.21. See **Attachment 1** for a summary of the payment bond claims.

UFG has incurred attorneys' fees and consultant costs totaling \$48,407.44, investigating these claims, and responding to the default of MSK. Furthermore, UFG has now set a reserve in the amount of \$3,851,000.00 as a result of the claims made against the bonds.

Pursuant to the Agreement of Indemnity dated August 21, 2015 (the "GIA"), each of the indemnitors, jointly and severally, is required, among other things, to indemnify and hold UFG harmless from any and all losses, claims, demands, liabilities, etc. related to any bonds issued on behalf of MSK.

Each of the indemnitors, jointly and severally, is likewise required to post collateral with UFG "as soon as liability exists or is asserted against the Surety, whether or not the Surety shall have made any payment, therefore. Such payment shall be equal to the amount of the reserve set by the Surety." See **INDEMNITY** SECOND paragraph below:

INDEMNITY SECOND: The Contractor and Indemnitors shall exonerate, indemnify, and keep indemnified the Surety from and against any and all liability for losses and/or expenses of whatsoever kind or nature (including, but not limited to, interest, court costs and counsel fees) and from and against any and all such losses and/or expenses which the Surety may sustain and incur: (1) By reason of having executed the Bonds, (2) By reason of the failure of the Contractor or Indemnitors to perform or comply with the covenants and conditions of this Agreement or (3) In enforcing any of the covenants and conditions of this Agreement. Payment by reason of the aforesaid causes shall be made to the Surety by the Contractor and indemnitors as soon as liability exists or is asserted against the Surety, whether or not the Surety shall have made any payment therefore. Such payment shall be equal to the amount of the reserve set by the Surety. In the event of any payment by the Surety the Contractor and Indemnitors further agree that in any accounting between the Surety and the Contractor, or between the Surety and the Indemnitors, or either or both of them, the Surety shall be entitled to charge for any and all disbursements made by it in good faith in and about the matters herein contemplated by this Agreement under the belief that it is or was liable for the sums and amounts so disbursed, or that it was necessary or expedient to make such disbursements, whether or not such liability, necessity or expediency existed; and that the vouchers or other evidence of any such payments made by the Surety shall be prima facie evidence of the fact and amount of the liability to the Surety.



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An immediate demand is made on each of you, as indemnitors, that executed the GIA, jointly and severally, to deposit with UFG certified funds in the amount of \$3,899,407.44. If these funds are not deposited by the close of business on January 13, 2023, UFG will file suit against you, as indemnitors, of the bonds, and seek other appropriate remedies of the law. This demand is in the amount UFG has incurred for costs incurred to date (\$48,407.44) plus the amount of the reserve set for claims made on the bonds (\$3,851,000.00). All amounts paid will be applied first to costs and losses incurred and then held as collateral security to protect UFG against future losses.

The failure to meet this demand and to provide the collateral security required to protect UFG from incurring losses will invalidate any request that you may make on UFG to litigate any claim, demand, suit, or judgment on the bonds. UFG has the absolute right to adjust, settle or compromise claims made on the bonds in the absence of the deposit of collateral security. See the **SETTLEMENT** THIRTEENTH paragraph below.

SETTLEMENTS THIRTEENTH: The Surety shall have the right to adjust, settle or compromise any claim, demand, suit or judgement upon the Bonds, unless the Contractor and the Indemnitors shall request the Surety to litigate such claim or demand, or to defend such suit, or to appeal from such judgement, and shall deposit with the Surety, at the time of such request, cash or collateral satisfactory to the Surety in kind and amount, to be used in paying any judgement or judgements rendered or that may be rendered, with interest, costs, expenses and attorneys' fees, including those of the Surety.

Be advised that UFG has not waived nor will waive any terms or provisions of the GIA, and nothing that UFG or any representative says or does should be viewed as a waiver or estoppel. UFG fully and completely reserves all of its rights under its bonds, the GIA, or any other legal or equitable position it may have, including the right to seek additional collateral and/or to be indemnified with respect to its incurred losses and expenses

Sincerely.

UNITED FIRE & CASUALTY COMPANY

Stuart M. Overton, ASFB

Surety Claims Assistant Manager

Enclosure: Attachment 1

cc: Alliant Ins. Services Inc. 44-1058

Kimi McBurney (via Email) Craig Ramseyer (via Email) Charlie Altman (via Email) Ryan Beaver (via Email)

12/28/22				MSK Payment Bond Claims					
			MSK					Totals	Notes
Principal	Bond #	Claim #	Job#	Project / Lawsuit	Claimant	Date	Amount		
MSK Construction	54-210960	0420293808	1703	VA Medical Center Durham NC	Cinderella Partners	4/12/2022	\$77,841.23		request sent to MSK for position/resolution
MSK Construction	54-210960	0420293808		VA Medical Center, Durham NC	Sunbelt Rentals	6/20/2022	\$15,970.29		request sent to MSK for position/resolution
MSK Construction	54-210960	0420293808		VA Medical Center, Durham NC	Rice's Glass Company	8/26/2022	\$253,211.00		request sent to MSK for position/resolution
MSK Construction	54-210960	0420293808		VA Medical Center, Durham NC	Xtreme Electrical	10/4/2022	\$204,724.58		request sent to MSK for position/resolution
MSK Construction	54-210960	0420293808		VA Medical Center, Durham NC	Rice's Glass Co	10/25/2022	\$253,211.00		recd lawsuit 12-15-22
MSK Construction	54-210960	0420293808		VA Medical Center, Durham NC	Advanced Concrete	11/4/2022	\$367,506.66		recd lawsuit 12-12-22
MSK Construction	54-210960	0420293808		VA Medical Center, Durham NC	Eskola LLC	11/28/2022	\$71,129.52		request sent to MSK for position/resolution
MSK Construction	54-210960	0420293808		VA Medical Center Durham NC	Sunbelt Rentals	12/6/2022	\$33,651.50		request sent to MSK for position/resolution
MSK Construction	54-210960	0420293808		VA Medical Center Durham NC	Foundation Building Materials	12/6/2022	\$10,685.84		request sent to MSK for position/resolution
MSK Construction	54-210960	0420293808		VA Medical Center Durham NC	Neo Corpration	12/14/2022	\$8,670.00	\$1,296,601.62	request sent to MSK for position/resolution
MSK Construction	54-219897	0420293820	1803	Renovate Bldg 2 = Med-Surg-Salisbury	South-Fair	9/29/2022	\$188,500.83		thumb drive sent to Kimi house
MSK Construction	54-219897	0420293820		Renovate Bldg 2 = Med-Surg-Salisbury	PCF Construction	11/14/2022	\$84,531.29	\$273,032.12	request sent to MSK for position/resolution
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MSK Construction	54-219900	0420293824	1805	Correct Operating Room-Salisbury	PCF Construction	11/14/2022	\$13,635.35	\$13,635.35	request sent to MSK for positon/resolution
MSK Construction	54-219901	0420293822	1807	Building 11 Addition and Renovations-Salisbury	South-Fair Electric	10/3/2022	\$276,283.94		thumb drive sent to Kimi house
MSK Construction	54-219901	0420293822		Building 11 Addition and Renovations-Salisbury	E L Jones Development	10/4/2022	\$80,973.74		thumb drive sent to Kimi house
MSK Construction	54-219901	0420293822		Building 11 Addition and Renovations-Salisbury	PCF Construction	11/14/2022	\$457,602.05		request sent to MSK for position/resolution
MSK Construction	54-219901	0420293822		Building 11 Addition and Renovations-Salisbury	Serenity Cabinets	12/1/2022	\$39,250.90		request sent to MSK for position/resolution
MSK Construction	54-219901	0420293822		Building 11 Addition and Renovatoins-Salisbury	Mecklenberg Roofing	12/12/2022	\$3,038.38		request sent to MSK for position/resolution
MSK Construction	54-219901	0420293822		Building 11 Addition and Renovatoins-Salisbury	Miller Paneling	12/14/2022	\$12,500.00		request sent to MSK for position/resolution
MSK Construction	54-219901	0420293822		Building 11 Addition and Renovatoins-Salisbury	First Defense Fire Protection	12/27/2022	\$48,127.89		request sent to MSK for position/resolution
MSK Construction	54-219901	0420293822		Building 11 Addition and Renovatoins-Salisbury	Scott Kay	12/27/2022	\$5,220.00		request sent to MSK for position/resolution
MSK Construction	54-219901	0420293822		Building 11 Addition and Renovatoins-Salisbury	Encompass Roofing & Waterproofing	12/27/2022	\$121,135.00	\$1,044,131.90	request sent to MSK for position/resolution
MSK Construction	54-219904	0420293825	1808	VAMC Pharmacy- Charleston Pharmacy	Master Steel	11/14/2022	\$80,221.37		recd lawsuit 12-16-22
MSK Construction	54-219904	0420293825	1808	VAMC Pharmacy- Charleston Pharmacy VAMC Pharmacy- Charleston Pharmacy	Eastern Cladding	12/14/2022	\$38,482.85	¢110 704 22	reguest sent to MSK for position/resolution
IVION CONSTRUCTION	54-219904	0420293025		valvio Friamacy- Chaneston Friamacy	Eastern Clauding	12/14/2022	φ30,402.05	\$110,704.22	request sent to MSK for position/resolution
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